

## foreign banks . in switzerland .

# Establishing a Bank in Switzerland

## Section 1:

### Providing financial services – when is a Swiss banking licence required?

A Swiss bank licence to provide financial services is needed, when (i) a business is active in the financial industry, (ii) thereby accepts deposits from the public on a commercial basis or intends to do so by publicly soliciting for such deposits; or (iii) if such deposits are then invested on the bank's own account and risk with an undetermined number of non-related third parties,. Thus, various classical banking activities as investment advice or portfolio management do not require a banking licence; they can often be provided domestically or cross-border without licence. Other financial market activities such as security dealers can be exerted with a Swiss security dealers' license. Such a license must be obtained in addition to the bank licence if the business model of a bank includes trading in securities for clients or for the dealers' own account, the underwriting, or the issuance of and trading with derivatives. The management of collective investment schemes and the distribution of such products require the respective permits as ruled by the Collective Investment Scheme Act.

Up to now providers without a permit could only accept funds from 20 people at most. On August 1, 2017 the Federal Council's revision of the Banking Ordinance entered into force and aims to reduce unnecessary regulatory obstacles for innovative business models, such as crowdfunding.

The new sandbox concept allows firms to accept deposits from the public up to a limit of CHF 1 million, provided that they are not invested and do not bear interest, even if such deposits come from more than 20 depositors, without requiring a banking licence (art. 6 (2) Bank O). The depositors must be informed in advance that the sandbox is not subject to FINMA supervision and that the deposits are not covered by the deposit protection scheme. Deposits may be invested and interest bearing if they are intended to fund a commercial or an industrial main activity, which means the rest of the crowdfunders, that do not intend to fund a commercial or an industrial activity, still has to follow the 20's rule.

The Federal Council has additionally set the maximum period for which deposits may be held in settlement accounts from 7 at 60 days.

Lastly, the FinTech regulation efforts also include plans to introduce a new licensing category for FinTech firms in the Banking Act.

### Organization, endowment and conduct

A Swiss banking license is granted to the Swiss entity of a foreign bank, if an appropriate organization is assured and sufficient equity capital and staff provided in order to conduct a banking operation in Switzerland. The board of directors, the executive board and significant shareholders (10 percent or more of the banks' share capital) of the Swiss entity must enjoy a good reputation and assume the proper conduct of the banking operations in Switzerland.

### Home country supervision

The foreign bank must be adequately supervised in its home country and the Swiss entity included in the group's foreign supervision on a consolidated basis. The foreign supervising authorities should not only approve the establishment of the

entity but also render judicial assistance.

### Reciprocity requirement

The country where the foreign bank and its main foreign shareholders are registered may grant reciprocity in the admission of foreign entities for Swiss banks in its territory (see Section [2]). The Swiss Financial Market Authority (FINMA) will approve a qualified foreign shareholding if the foreign shareholder has residence and/or a registered business seat in a signatory country of the WTO/GATS Agreement of 12 December 1997. EU member countries and countries such as the United States, as well as the majority of the countries worldwide, which have signed the GATS including its Fifth Protocol, meet this condition. If a foreign shareholder has its residence and/or registered business seat in a country not being a signatory country to said WTO/GATS Agreement, FINMA may still approve if such country grants reciprocity to Swiss banks for their territories. The country of reciprocity cannot have substantial limitations for all commonly known banking activities, as commercial banking, securities trading and brokerage, investment banking etc.).

### Restrictions

Banks with a foreign shareholder operate under fundamentally the same rules and regulations as Swiss owned banks. However, they are not allowed to use a name referring to Switzerland or giving the impression the bank may be Swiss owned. Also, the bank must avoid that a misunderstanding can occur when designing its branding and publicity material.

## More information

The requirements for a banking licence are listed in the Swiss Federal Law on Banks (Bank Law): [DE](#) ; [FR](#) ; [IT](#) ; [EN](#)

For English translations of the legislative texts visit KPMG: [link](#)

## Section 2: What legal form for a foreign investor?

### 2.1 Share / stock Company

Most Swiss banks with a foreign shareholder are organised in the form of the share or stock company. As such they are subject to the Swiss Code of Obligations, the fundamental company law for Swiss share/stock companies. Other forms as limited liability companies, partnerships or limited partnerships are possible, but not used by foreign investors.

Foreign shareholders are either natural persons (i) being citizens of countries other than Switzerland or not being a permanent resident in Switzerland; or (ii) share companies, limited liability companies, partnerships or limited partnerships with a registered business seat outside of Switzerland (or with a registered business seat in Switzerland but foreign-controlled).

Controlling interests (and their subsequent changes) of foreign shareholders must be notified towards and approved by FINMA. A controlling interest exists if it has a majority in the voting rights (but not necessarily share capital) or

can be exerted otherwise (e.g. via a shareholder agreement and/or a loan agreement, or through non-qualified shareholders acting in concert and thereby exerting a controlling interest).

## 2.2 Branch

A foreign bank, may want to set up a branch in Switzerland. Branches are exempted from the mandatory equity and risk allocation requirements, and tax considerations may also favour this form, as branches are not subject to the 35 percent federal withholding tax on dividends (see also Section [8]). There are also favourable tax schemes available for so-called finance branches. However, FINMA may require financial guarantees hold on-site in Switzerland, if deemed necessary.

The provision of banking services through a branch requests a license. It will be granted under, amongst others, the following preconditions: (i) the foreign bank is adequately organised and has sufficient financial means including qualified personnel; (ii) the foreign bank is subject to adequate governmental supervision which includes the Swiss branch; and (iii) competent foreign supervision authorities do not oppose the establishment of the Swiss branch.

## 1.3 Representation office

Representative offices are not permitted to undertake bank activities, even though they can offer services for which a banking licence is not required, such as marketing or purely representative activities.

## More Information

FINMA provides an introduction into the licensing procedure: [DE](#) ; [FR](#) ; [IT](#) ; [EN](#)

Guidelines for licence applications for banks, securities dealers' and branches, representative offices of foreign banks are published by FINMA: [DE](#) ; [FR](#) ; [IT](#) ; [EN](#)

The FINMA Ordinance on Foreign Banks in Switzerland regulates branches, representative offices. An unofficial English translation is available: [EN](#)

## Section 3: Corporate and Banking Governance

### 3.1 Shareholders

As a matter of Swiss corporate law, the shareholders of a Swiss bank have the competences and powers to (i) elect the board members and the external auditors and to (ii) approve the bank's annual report including its audited financial statement. Furthermore, changes and/or amendments on the bank's articles of association (subject to the previous approval by FINMA) are approved by the shareholders.

Shareholders holding at least 10 percent of the bank's share capital or votes (so-called qualified shareholders) must have a good professional and personal reputation and guarantee for the bank's "beyond any doubts" – management of all its banking operations (see Section [5]).

### 3.2 Board

The board of a Swiss bank has the ultimate direction on the bank's business and responsibility of its appropriate organisation and supervision of the banks' management. The Board is in first instance responsible for the internal control system including compliance and risk control. The board signs off the institutional-wide risk management framework.

The board is required to delegate via internal organisational regulations its transferable management powers regarding the daily operational management to the management. If the organisational regulations are unclear, there is no automatic presumption in favour of the board, as it is the case with an ordinary Swiss share company; see also Section [2]).

As required by FINMA the board must meet at least four times per annum, but may be required to meet more often, depending on size and complexity. The majority of board members must be present when board resolutions are taken and a majority of present board members take resolutions and makes elections. The chairman of the board has the casting vote. Circular board resolutions are possible e.g. for routine resolutions and they may also be taken by modern communication forms (e.g. by e-mail).

The board of a Swiss bank must consist of at least three members. The practice of FINMA is to require either the chairman or the vice-chairman of the board to have residence in Switzerland (but he or she does not have to be a Swiss citizen). Moreover, FINMA requires the majority of the board members to be familiar with and have experience in Swiss banking and a thorough understanding of the regulatory and legal framework.

At least one third of the board members must be independent and be named in the bank's annual report. They are independent if they meet the following tests: (i) no current employment at the bank and no such employment within the last two years before becoming board member; (ii) no auditor-in-charge function for the bank during the same cool-off period; (iii) absence of any business relationship leading to a conflict-of interest; (iv) not being a qualifying investor as further explained under Section [2.1]. FINMA may approve exceptions if one third of the board members do not comply with these independency requirements.

All board members must have a good professional and personal reputation and guarantee a bank management "beyond any doubts". They must have the necessary know-how, experience and time availability. Their personal and business interests must not collide with the bank's interests. Board members - including the Chairman - cannot have management function with the bank in order to assure clear separation of powers and duties between the board and management.

### 3.3 Board committees

If a board consists of five and more board members, and if the bank's articles of association provide so, board committees (nomination committee, risk committee, credit committee etc.) of at least two board members can be set-up. Such committees do not relieve the board from its core responsibilities.

### 3.4 Audit committee

Institutions in supervisory categories 1 to 3 must establish an audit committee and a risk committee. Institutions in supervisory category 3 may combine these into a single committee.

The audit committee supervises and controls the integrity of the bank's financial statements, the internal auditors in terms of financial reporting and the external auditors, including their collaboration with the internal audit. Members

of the audit committee must have special knowledge and practise in the fields of accounting and auditing. A majority of its members must be independent (see Section [3.2]).

### 3.5 Management

The management is in charge of the daily operational business, in which the board or board members are not permitted to intervene. High management members must as well have a good professional and personal reputation and must guarantee for a "beyond any doubts" – management of the banking operations. They cannot be member of the bank's board (see Section [3.2]).

There are no nationality requirements for high management members. They must reside at a place where they can actually exert their managerial functions in a responsible way; residence in Switzerland is therefore not an explicit requirement.

According to the practise of FINMA, the bank's management must consist of at least two members (chief executive officer, deputy and possibly a further management member). They are not only corporate organs of the bank, but also its full time employees and cannot be management members of other banks. The chief executive officer leads the bank's executive board and prepares and chairs its regular meetings (at least monthly as required by FINMA; more often depending on the size of the bank and the complexity of its business model).

## More Information

The Swiss Code of Obligations (Art. 698 and 716a) lists the powers of the meeting of the shareholder and the non-delegable duties of the boards of directors: Art 698: [DE](#) ; [FR](#) ; [IT](#) ; Art 716a: [DE](#) ; [FR](#) ; [IT](#)

Many of the supervisory requirements are spelled out in FINMA Circular 17/01: [DE](#) ; [FR](#)

The FINMA Ordinance on Foreign Banks in Switzerland regulates branches, representative offices: [DE](#) ; [FR](#) ; [IT](#) – [EN](#) (unofficial translation)

Economiesuisse – the Swiss Business Federation – publishes the Swiss code of best practice of corporate governance: [EN](#)

## Section 4: Internal Control Systems

### 4.1 Compliance, risk control, and whistleblowing

There are at least two controlling bodies within the ICS: the revenue-generating units, and the control bodies which are independent of them. The independent control bodies monitor risks and compliance with statutory, regulatory and internal rules. Individual institutions can establish a variety of control bodies which must, however, at least cover the duties and responsibilities of risk control and the compliance function.

Compliance supports, advises, trains and informs the bank's management and its staff in regard to compliance issues; it reports regularly and ongoing to the bank's management on all compliance aspects; and annually to the bank's board on the assessment and potential re-assessment of compliance risks. It informs and if necessary

involves internal and external auditors. In many banks, compliance is also assuming the function of bank internal anti money laundering specialist, as required by the Swiss anti-money laundering law.

Risk control reviews independently and on a ongoing basis the incurred risk profile, defined and approved by the board. It implements adequate risk surveillance systems and adapts them, if necessary, to the bank's changed operations and/or new banking products. It develops, implements and controls methods and procedures for risk measurement and the surveillance in particular of the regulatory equity capital (see Section [5.1]) including the Bank Law's risk allocation and liquidity provisions.

A Swiss bank is required to have one or more designated compliance persons and risk controllers, respectively, who can also work part-time or can exert their function in conjunction with another job at the bank (e.g. a legal counsel can assume the task of a compliance officer). An outsourcing of the compliance function is also permitted.

Although there is currently no legal requirement to define an escalation process for whistleblower, many banks have in place such procedures. Internal rulings assign a person – compliance or an HR officer, a board member or an external lawyer – to act as person of confidentiality to whom staff can turn to report grievances in the bank. The Swiss Government has presented a draft legislation for enhanced whistleblower protection in autumn 2008.

#### 4.2 External and internal auditors

External auditors are mandated by the bank to control not only the financial statements, but also the banking operations according to the "beyond-any-doubt" principle which includes operating within the rules and regulations set by Swiss law and Swiss banking and financial market regulations.

External auditors must be licensed by FAOA (Federal Audit Oversight Authority), whereas FINMA sets out the scope and depth of the auditor's task. The expenses of the external auditor's work are carried by the respective bank.

Banks are required to have internal auditors which are appointed by the bank's board. The most important tasks include the review of the financial results and positions including a review of its internal control system. The internal auditors furthermore perform on an ongoing basis the operational and regulatory audits, i.e. the review of the bank's business policy and its compliance with bank internal organisational rules and regulations (in conjunction with the persons responsible for the bank's compliance functions; see Section [4.1]).

The internal auditors act mainly on instructions of the bank's board and they also report in first instance their findings to the board. The internal auditor must be qualified according to FINMA – standards.

## More Information

The audit matter is spelled out in FINMA Circular 17/01: [DE](#) ; [FR](#) ; [EN](#) (unofficial translation)

The extent of the audit report is set in FINMA Circular 13/03: [DE](#) ; [FR](#) ; translation of prev. Circ 05/2: [link](#)

FINMA provides a short description of the dual audit structure: [DE](#) ; [FR](#) ; [IT](#) ; [EN](#)

The Association of Foreign Banks in Switzerland informs on the Swiss regulatory framework: [DE](#) ; [FR](#) ; [EN](#)

The content of the external audit is in the FINMA Circular 13/03: [DE](#) ; [FR](#)

## Section 5: Prudential regulation, deposit insurance and accounting

### 5.1 Regulatory capital, cluster risks and liquidity

A Swiss bank is required to have a fully-paid share capital of at least CHF 10 million (in practise, a minimum share capital of CHF 15 million is required). Besides, Swiss banks have to provide capital to offset, amongst others, market, credit (including non-counterparty) and operational risks. The Swiss prudential regulation foresees different approaches to determine the risk-weighted capital requirements. Depending on the business, the minimum required capital may vary considerably.

Banks must assure an adequate management of market, credit, liquidity, legal and operational risks and put in place a business continuity plan. Special provisions rule large exposures. Of specific importance for foreign banks are credit positions with group entities, which are limited to 25% of regulatory capital, unless specific exemption is given. Swiss banking laws require also the holding of sufficient liquidity, i.e. liquid active positions must be at least 33% of short-term liabilities.

The Liquidity Coverage Ratio (LCR) is designed to ensure that banks hold sufficient high quality liquid assets (HQLA) to cover the net outflow of funds at all times in a stress scenario with a time horizon of 30 calendar days as defined by assumptions of outflow and inflow.

### 5.2 Deposit insurance

Deposits in Swiss banks are covered up to CHF 100'000 by the deposit insurance which is run by banks and securities' dealers. In case of bankruptcy of a Swiss bank, all other entities cover the outstanding loss to clients of the liquidated bank according to their share on the total of privileged assets. Their contribution will be paid back from the assets liquidated by the bankrupt bank. To assure sufficient assets being held in Switzerland, Swiss banks are required to hold 125% of their privileged deposits in some asset classes held in Switzerland and readily liquidated.

### 5.3 Accounting rules and reporting

Banks in Switzerland are subject to accounting rules for banks specified by FINMA. In the course of several revisions, these accounting rules – the Swiss GAAP FER – have been converted to the International Financial Reporting Standards (IFRS), although some important differences remain (e.g. fair value accounting and pension fund treatment). For consolidated group accounting, FINMA allows Swiss banks a reporting according to IFRS or US GAAP. In addition, Swiss banks which are controlled by shareholders having their residence in the European Economic Area may apply the accounting rules of that EEA member state.

## More Information

Recommendations on Business Continuity by the Swiss Bankers' Association: [DE](#) ; [FR](#) ; [IT](#) ; [EN](#)

The Swiss Deposit Insurance Scheme: [www.einlagensicherung.ch](http://www.einlagensicherung.ch) (site available in four languages)

The Association of Foreign Banks in Switzerland informs on the deposit insurance: : [DE](#) ; [FR](#) ; [EN](#)

The accounting rules and financial reporting are specified in FINMA Circular 15/01: [DE](#) ; [FR](#) ; [EN](#) (unofficial translation).

The regulatory requirements for supervisory reporting are laid down in FINMA Circular 08/14: [DE](#) ; [FR](#) ; [EN](#)  
(unofficial translation)

## Section 6: The beyond-any-doubt principle

The Bank Law gives the FINMA the power to withdraw a licence of a bank which does not comply with the beyond-any-doubt (or fit-and-proper) principle. Apart from complying with all rules and regulations, this principle is understood to embrace a conduct of the bank in the spirit of the regulatory and legal requirements.

Apart from the issues laid out in Sections 2-5, the most important rules are outlined below. Swiss supervisory standards are in line with the recommendations of the different international organisations.

### 6.1 Swiss Federal Anti Money Laundering Act and the Due Diligence Agreement

Swiss Anti-Money Laundering legislation is compliant with the different international requirements, in particular the FATF/GAFI recommendations and the recommendations of the Basel Committee on Banking Supervision. It requires banks to apply a risk-based approach when monitoring the personal, economic and political background of clients, to supervise transaction and to file a report to the relevant authority if a founded suspicion of money laundering arises. Such reports are only to be made when the internal investigation substantiates.

KYC duties are laid down in the so-called Due Diligence Agreement, specifying very detailed requirements on account opening, documentation, and the duty to identify the beneficial owner of assets.

### 6.2 Market abuse and insider ruling

In spring of 2008, FINMA has issued its Regulations on Market Behaviour for Security Dealers. These regulations prohibit the use of price-sensitive information that is not publicly available when trading in securities (information abuse). The potential circulation of price sensitive information for instance in the media or via a bank's research department is only permitted if one may assume in good faith that the information is true.

The regulations also provide that all market transactions must have an economic background and correspond to a real and existing situation of offer and demand. A variety of market abuses such as wash trades, ramping, capping and spoofing (just to name a few) are explicitly considered illicit trading techniques. The same is true e.g. for front and parallel running. The regulations require the banks to establish "Chinese walls" in order to avoid conflicts of interest and/or information abuses. To this end, the bank's employees can also be monitored in their own trading and investment activities.

Insider trading is a crime which can be punished by jail of up to three years and/or fines. Insiders can be members of the board and/or the group executive management, auditors or other mandated professionals. Insider trading is given if such individuals trade in listed securities based on confidential information which substantially influences in a foreseeable way the stock exchange prices of these securities. Relevant is the use of all confidential information as long as such information can substantially influence the stock prices of securities traded by an insider.

### 6.3 Suitability, appropriateness, best execution and acting in the interest of clients

Banks are obliged by a set of general legal prescriptions and several self-regulatory texts to act in the interest of the client and to avoid conflicts of interest or – if the conflict is inherent to the service provision itself – to disclose such conflicts. The duties of information, of disclosure and of loyalty apply to securities' transactions as well as to



asset management services. Although no formal suitability and appropriateness prescription exist, banks must take into account the economic background of a client and his or her knowledge of financial investments when advising.

#### 6.4 Autonomy and responsibility of foreign banks in Switzerland in financial transactions with the parent

FINMA has issued various decisions which concerned the autonomy and responsibility of Swiss subsidiaries or branches of foreign banks in financial transactions with the parent group and the resulting legal and reputational risks. The actions that were objected to concerned the granting of loans and share capital participation on behalf of the parent group.

According to the view and the supervisory practice of FINMA, a foreign bank in Switzerland may not take over information and instructions from its head office in connection with a transaction that is being carried out group-wide without examining them. The monitoring of the legal and reputational risks connected with financial transactions belong to the responsibility of the board of directors and the management. They must assure that risks from such transactions are identified, assessed, monitored and controlled.

## More Information

The Association of Foreign Banks in Switzerland informs on the KYC, anti-money laundering requirements and the specific ruling of data transfer for consolidating purposes: [DE](#) ; [FR](#) ; [EN](#)

FINMA publishes all the legal texts related to anti-money laundering: [DE](#) ; [FR](#) ; [IT](#) ; unofficial translation: [EN](#)

The Swiss Bankers' Association informs on the combat of money-laundering: [DE](#) ; [FR](#) ; [IT](#) ; [EN](#)

FINMA-Circular 13/08 (Market Conduct Rules)

FINMA-Circular 13/07 (Limitierung gruppeninterner Positionen – Banken)

## Section 7: Outsourcing

The outsourcing of certain banking activities such as IT, payment and security deposit processing, compliance, etc. is permitted without a special approval from FINMA. Only supervision, ultimate management and control functions of the board of directors and central management tasks of management are explicitly forbidden to be outsourced. Exempted are general instructions and decisions for the purpose of group management and monitoring provided the enterprise forms a part of a group with an appropriate consolidated supervision for financial entities. An outsourcing must comply with the Swiss Data Protection Act. The bank must in particular assure that the client data cannot be processed by unauthorised persons. In jurisdictions where the confidentiality measures applicable for banks do not apply, banks must refrain from passing on client data, unless the clients expressly consent to a specific data transfer.

FINMA has defined seven conditions under which an outsourcing is permitted. The banking services to be outsourced must be clearly specified in a written contract with the outsourcing partner. This partner must be carefully selected, instructed and controlled. The bank continues to bear responsibility for the outsourced business area and must – together with the service provider – define the security requirements and the security framework.

The outsourcing bank and its internal and external audit must secure their own appropriate information and control rights.

The outsourcing partner must also explicitly accept the confidentiality rules of Art. 47 of the Bank Law. The bank's clients must be appropriately informed in particular if the outsourcing is crossborder. Outsourcing abroad requires an explicit proof of the possibility to audit; FINMA and the audit company may assume and legally enforce their rights to perform controls. FINMA also requires that the bank's auditors regularly review as to whether the above conditions (and others pertaining to outsourcing) are met.

## More Information

The outsourcing requirements are laid down in FINMA Circular 18/03: [DE](#) ; [FR](#) ; unofficial translation: [EN](#)

The Association of Foreign Banks in Switzerland informs on confidentiality (Art 47 Bank Law): : [DE](#) ; [FR](#) ; [EN](#)

The Swiss Federal Department of Finance informs on the confidentiality requirements in banking: [DE](#) ; [FR](#) ; [IT](#) ; [EN](#)

## Section 8: Taxes

In Switzerland, it is not only the federal government raising corporate income taxes, but also the cantons (states) and the communes have their own corporate income tax systems and tax rates. The federal government does not raise a tax on the bank's equity capital whereas certain cantons and communes also tax the equity capital.

Federal corporate income tax is raised on the worldwide income earned by Swiss companies. Corporate income is determined based on the company's financial statements. The federal corporate income tax is raised at the rate of 8.5% of the net corporate income, corresponding to a pre-tax rate of 7.83% since corporate income taxes related to a particular financial year are also deductible.

Generally speaking, cantonal and communal corporate income taxes are levied in a similar way as the federal income tax. Tax rates will depend on the canton and the commune in which the company is registered. In most cantons, the combined cantonal/communal tax rate is between 18 and 26%.

Special tax treatment and tax relieves exist for holding companies, so-called domiciliary and services companies and for finance branches (see also Section [2.2]).

Dividend payments of Swiss subsidiaries to their foreign parent companies are subject to a 35% withholding tax unless a double taxation treaty applies. Switzerland has concluded about 80 double taxation treaties with other countries. In addition, Switzerland and the EU countries have agreed on a Swiss withholding tax exemption for dividend payments if the European parent company has, amongst others, a minimum direct shareholding of 25% and if the holding period exceeds two years.

## More Information

The Swiss Federal Office of taxes publishes two overviews on the Swiss tax system:

Outline: [DE](#) ; [FR](#) ; [IT](#) and Advantages: [DE](#) ; [FR](#)

OSEC – the Swiss entity for trade and investment promotion – informs on the Swiss tax system in its Handbook for Investors (chapter 9): [doc](#)

## Section 9: Employment, immigration, salaries and wages

### 9.1 Employment

Switzerland has a liberal employment law regime. An employer is free in hiring the staff of his or her choice and there are no direct federal and/or cantonal legal provisions on minimal wages in place. The main collective labour agreements do not contain minimum wage provisions; such agreements are not mandatory and generally applicable. For the service industry, the weekly maximum working hours are 45. Minimum holidays are 20 working days per annum. The normal working hours in the financial sector are less, very often (40 hours) and 25 working days holidays are rather the rule than the exception.

An employer is free to dismiss staff members within reasonable notice periods (usually between one and three months) as long as there is no unfair dismissal based e.g. on race, gender, union membership etc. There are measures in place to protect against dismissals during maternity, illness, public service etc. The employer's obligations to continue salary payments in case of illness or accident are limited and usually covered by special salary insurances.

Unlike in other European countries, major redundancies can be accomplished in a relatively short time period without undergoing substantial information and consultation procedures.

### 9.2 Immigration

#### 9.2.1 EU and EFTA citizens

The Agreement on the Free Movement of Persons between Switzerland and the EU (Agreement on the Free Movement of Persons) provides that EU and EFTA citizens (including nationals of Malta and Cyprus) have the unconditional right to enter, stay and work in Switzerland. Quotas on working permits apply for citizens of the EU member states which joined on or after 1 May 2004. They are due to expire in 2011.

Employees who work for less than three months in Switzerland only need to notify the labour and immigration authorities. For longer working periods, EU and EFTA citizens require a residence and work permit but the Agreement on the Free Movement of Persons has substantially simplified the process. The following permits are available:

- L-Permits: Various types of these exist. They are granted for employment contracts of less than a year;
- B-permits: These are granted for employment contracts of more than a year or of unlimited duration;
- G-Permits: These entitle the employees to work and live in Switzerland during the week but not to reside in Switzerland during the weekend. For example, an employee could work in Zurich during the week and reside in London during the weekend.

### 9.2.2 Other foreign nationals

Foreign nationals not being citizens of the EU/EFTA are subject to the restrictive provisions of the Foreign Nationals' Residence and Settlement Act and its regulatory statutes, particularly the Ordinance on the Limitation on the Number of Foreign Nationals. L- and B-permits are available and are granted to only a limited number of well-qualified employees. Furthermore, an employer must prove that despite considerable search efforts no suitable Swiss, EU or EFTA citizen could be found to fill the vacancy.

### 9.3 Salaries and wages

In Switzerland, there is a number of collective bargaining agreements which apply to the banking industry, amongst them the "Agreement on Conditions of Employment for Bank Staff" concluded between some of the main social partners in the banking industry. This collective agreement provides, amongst others, for a minimal wage for low level bank staff which is CHF 50'000 per year.

Otherwise, Swiss banks are free to negotiate with employees, in particular with higher management members, their wages and salaries (very usual are share and option plans included in contribution plans). In other words, the Swiss employment law does not provide for minimum wages. However, since 1 June 2004, following the introduction of the Agreement on the Free Movement of Persons, statutory provisions have been introduced that allow for the creation of administrative bodies and measures to prevent wage dumping (preventing employers disregarding the usual and customary wages paid in an industry).

The federal and cantonal governments have created commissions (Commissions Tripartite), consisting of representatives of the canton, the employers and the employees. They monitor the employment market and in cases of wage dumping attempt to reach mutual understanding with the relevant employer. If no understanding is reached within two months, they request the cantonal or federal government to issue a general employment agreement or to declare a collective agreement as generally applicable in the relevant industry.

## More Information

The Federal Department of Foreign Affairs' Integration Office informs on the freedom of movement: [DE](#) ; [FR](#) ; [IT](#) ; [EN](#)

OSEC – the Swiss entity for trade and investment promotion – informs on the Swiss labour market:

- working permits, wages and salaries, and other aspects: [link](#)

- investor's guide (chapter 6-8) on labour market related issues (costs, human capital, training): [link](#)

## Section 10: Real Estate

Business entities registered, organised, or managed abroad or foreign-controlled businesses may acquire real estate in Switzerland without any governmental approval as long as the real estate serves as a permanent business establishment for trade, production, service or otherwise commercially operated business. The real estate may contain land reserves of up to one third which does not serve the foreign acquirers' business in Switzerland (and which, e.g. may be rented out to third parties). Special rules apply if the real estate contains residential apartments.

Acquisition does not only mean the formal purchase of real estate through, amongst others, registration in the local land registry, but all other legal transaction that lead, as a matter of substance, to a position similar to a land owner (via e.g. constructions and/or usufructuary rights, through substantial loan financing etc.).

Foreign control is usually considered as given, if a foreign shareholder in a share company owns more than a third of the share capital or may exert more than a third in the voting rights of such company

EU/EFTA citizens having their main residence in Switzerland can acquire any Swiss real estate as Swiss citizens and holders of a so-called C-Permit can. Conversely, non-EU/EFTA citizens if choosing Switzerland as their main residence (and if permitted to do so under applicable immigration laws) may acquire without an approval residential real estate of up to 3'000 square meters.

## More Information:

The Federal Office of Justice publishes guidelines, with contact details of the cantonal administrations, on the acquisition of real estate by foreign persons: [doc](#)

# Annex I: Annual cost of establishing and operating a Swiss bank

## Set up and operational costs for a smaller Swiss bank

We provide below a rough survey on the set-up and operating costs of establishing and operating a bank with private banking activities in Switzerland. The estimations are based on institutes with 10 employees, starting to operate in 2007. Note that the figures are indications; depending on the business model, on location, on the economic situation and on the skills which are hired, actual costs may deviate considerably.

### One time set up costs

- Application	CHF 100'000-150'000	
- FINMA fees plus stamp taxes		CHF 50'000-60'000
- Bank auditors		CHF 20'000-40'000
- Drafting of legal documents (in particular risk and other regulations)		CHF 200'000-300'000
- Set up of information technology (IT)		CHF 150'000-250'000

### Yearly operating costs

- Business premises	CHF 120'000-.....
- Administrative costs	CHF 1'000'000-1'500'000
- Staff (board members, higher management)	CHF 1'500'000-2'000'000
- Bank auditors	CHF 100'000-120'000

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|--|-----------------------|
| - Internal auditors                          | CHF 30'000-40'000     |
| - Information technology (outsourcing model) | CHF 800'000-1'200'000 |

## Annex 2: Checklist

### Market Entry

#### Activities

- Offer of financial market activities defined
- Business plan established
- Case for banking license established
- If not, case for securities' dealers licence or unlicensed activities established

Assured that there is no reciprocity clause which may inhibit the extension of the bank licence due to missing GATS agreement

#### Market entry as bank

- Establishing
  - Independent entity for non-bank foreign investors (as incorporated company or other form)
  - Subsidiary (in form of incorporated company)
  - Branch
- Incorporating new bank
- Buying existing bank

#### Location of bank

- Business location established
- Office facilities, tax obligations, commercial register requirements duly taken into account

### Documents

- Documents required by FINMA available
- Legally required equity capital of CHF 15 Mio available
- Cost plan for operating a Swiss bank approved

### Board

- Good professional and personal reputation of controlling shareholders including board and group management members assured
- Board and group management members identified

- Majority of Board members have good knowledge of the Swiss financial system; age limit taken into account; at least one Board member living in Switzerland
- Chairman and vice chairman of the board and CEO determined

## Organisation

- Contact to professional advisors when establishing/acquiring a Swiss bank
  - Auditor (mandatory)
  - Law firm
  - Tax consultant
- Committees established
  - Audit Committee (mandatory or optional)
  - Others: .....

## Employees

- Number of persons and qualification
  - Current
  - Extension according to business plan
- Remuneration policy (incl. bonus policy)
- Required working permits
  - Necessary
  - If yes, how many

## Real Estate

- What business premises shall the future bank have (buying vs. renting)?
- For how many employees?

## Infrastructure

- Outsourcing decisions taken
  - Full outsourcing (Backoffice, IT, Reporting)
  - IT
  - Others (trading)
- Access to payment systems, stock exchange, custodian
- Supervisory requirements on outsourcing are met

## Document Management:

- Are the following documents readily available?
  - Entry in commercial registry
  - License FINMA
  - Articles
  - Foundation notes of solicitor
  - Acceptance letter auditor
- Confirmation payment made own capital
  - Rules and procedures
  - Share register
  - Share obligation agreement
  - Outsourcing agreements (in particular IT)



## Annex III: Useful contacts

### Competent authority

Swiss Financial Market Authority FINMA; Laupenstrasse 27; CH-3003 Bern  
Phone: +41 (0)31 327 91 00; Fax: +41 (0)31 327 91 01; Email: [info@finma.ch](mailto:info@finma.ch)  
[www.finma.ch](http://www.finma.ch)

### Commercial registers in Switzerland

Zefix a central business name index including links to the commercial registers in Switzerland published by the Federal Office of Justice, CH-3003 Bern: [DE](#) ; [FR](#) ; [IT](#) ; [EN](#)

### Officially recognised banking auditors

FINMA publishes a list of recognised banking auditors: [DE](#) ; [FR](#) ; [EN](#)

### Lawyers' associations

Swiss Bar Association; Marktgasse 4; CH-3001 Bern  
Phone: +41 (0)31 313 06 06; Fax: +41 (0)31 313 06 16; Email: [info@swisslawyers.com](mailto:info@swisslawyers.com)  
<http://www.swisslawyers.com/en/home/home>

Zurich Bar Association; Bahnhofstrasse 61; CH-8023 Zurich  
Phone: +41 (0)44 211 51 81; Fax: +41 (0)44 211 51 82; Email: [sekretariat@zav.ch](mailto:sekretariat@zav.ch)  
<http://www.zav.ch/home/?newLangID=en>

### Tax issues

Tax issues are strongly influenced by the cantonal and communal tax laws (see Section [8]). They may also depend on the kind of banking services offered. The cantonal tax authorities are the first instance to contact. In specific cases, a tax expert should be consulted.

The Swiss Federal Tax Administration may give information on general issues of the Swiss tax system. Note that in Switzerland, the cantonal and communal taxes are far more important than federal taxes.

Swiss Federal Tax Administration; Eigerstrasse 65; 3003 Bern  
Phone: + 41 31 322 71 06; Fax: + 41 31 322 73 49; Email: [sd@estv.admin.ch](mailto:sd@estv.admin.ch)  
[www.estv.admin.ch](http://www.estv.admin.ch)

### Banking Organisations

All banks in Switzerland are organised in the Swiss Bankers' Association which provides information on the Swiss Financial Market and on self-regulatory issues

Swiss Bankers' Association; Aeschenplatz 7; CH-4002 Basel  
Phone: +41 (0)61 295 93 93; Fax: +41 (0)61 272 53 82; Email: [office@sba.ch](mailto:office@sba.ch)  
[www.swissbanking.org](http://www.swissbanking.org)

Swiss banks with a foreign shareholders are represented in the Swiss Bankers' Association and vis-à-vis the Federal Administration and the supervisory authorities by the Association of Foreign Banks in Switzerland.

Association of Foreign Banks in Switzerland; Usterstrasse 23; CH-8001 Zurich  
Phone: +41(0)44 224 40 70; Fax: +41(0)44 221 00 29; Email: [info@afbs.ch](mailto:info@afbs.ch)  
[www.afbs.ch](http://www.afbs.ch)

#### Promotion of Switzerland as location

OSEC – the Swiss entity for trade and investment promotion – is the specialised agency to promote Switzerland as location for industry and service provider. OSEC is represented in all three language zones of Switzerland.

Osec Zurich; Stampfenbachstrasse 85; CH-8021 Zurich  
Phone: +41 44 365 51 51; Fax: +41 44 365 52 21; Email: [contact@osec.ch](mailto:contact@osec.ch)

Osec Lausanne; Avenue d'Ouchy 47; CH-1001 Lausanne  
Phone: +41 21 613 35 70; Fax: +41 21 613 35 02; Email: [info.lausanne@osec.ch](mailto:info.lausanne@osec.ch)

Osec Lugano; Corso Elvezia 16; CH 6901 Lugano  
Phone: +41 91 911 51 35; Fax: +41 91 911 51 39; Email: [info.lugano@osec.ch](mailto:info.lugano@osec.ch)

Email – general contact form: [http://www.osec.ch/internet/osec/en/home/about\\_us/contactform.html](http://www.osec.ch/internet/osec/en/home/about_us/contactform.html)  
[www.osec.ch](http://www.osec.ch)

#### Employment Offices

The addresses and contact details of the cantonal labour offices can be found under:  
[www.jobarea.ch/ueberuns/adressen/](http://www.jobarea.ch/ueberuns/adressen/)

The State Secretariat of Economic Affairs is the Administration's center to coordinate economic policy. Among other fields, it is responsible for industrial policy, foreign economic policy and investment promotion.

State Secretariat for Economic Affairs SECO; Effingerstrasse 31; CH-3003 Bern  
Phone: +41 (0)31 322 56 56; Fax: +41 (0)31 322 27 49; Email Contact form: [link](#)  
[www.seco.admin.ch](http://www.seco.admin.ch)

#### Statistical Data on Switzerland and on the Swiss Banking System

The Federal Office of Statistics publishes the Statistical Yearbook of Switzerland (and a smaller English brochure Statistical Data in a Nutshell).

Federal Statistical Office; Espace de l'Europe 10; CH - 2010 Neuchâtel  
Phone: +41 (0)32 713 60 11; Email: Contact form: [link](#)  
[www.bfs.admin.ch](http://www.bfs.admin.ch)

The Swiss National Bank provides annual information on the banking sector and frequent statistics on monetary policy.

Swiss National Bank; Börsenstrasse 15; CH - 8022 Zurich  
Phone: +41 (0)44 631 31 11; Fax: +41 (0)44 631 39 11; Email: [snb@snb.ch](mailto:snb@snb.ch) or contact form: [link](#)  
[www.snb.ch](http://www.snb.ch)

The Federal Department of Finance informs on the Swiss financial centre. Its economic service is in charge of all laws and ordinances related to the Swiss Financial market.

Federal Department of Finance; Bundesgasse 3; 3003 Bern

Phone: +41 (0)31 322 60 86; Fax +41 (0)31 323 38 52; Email [info@gs-efd.admin.ch](mailto:info@gs-efd.admin.ch) or contact form: [link](#)  
[www.efd.admin.ch](http://www.efd.admin.ch)

Publication on Switzerland as a financial centre: [DE](#) ; [FR](#) ; [IT](#) ; [EN](#)